

CHAPTER 288

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 18-1224

BY REPRESENTATIVE(S) Willett, Carver, Gray, Kraft-Tharp, Singer;
also SENATOR(S) Gardner, Tate.

AN ACT

CONCERNING THE PROCESS THAT IS DUE FOR THE IMPOSITION OF DISCIPLINE THAT AFFECTS A PERSON'S ABILITY TO PRACTICE AN OCCUPATION, AND, IN CONNECTION THEREWITH, REQUIRING THE PARTIES TO SUBMIT TO MEDIATION AND MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 24-4-104, **amend** (6) as follows:

24-4-104. Licenses - issuance, suspension or revocation, renewal. (6) ~~No previously issued license shall be revoked, suspended, annulled, limited, or modified, except as provided in subsection (3) of this section~~ EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, AN AGENCY SHALL NOT REVOKE, SUSPEND, ANNUL, LIMIT, OR MODIFY A PREVIOUSLY ISSUED LICENSE until after HOLDING A hearing as provided in section 24-4-105.

SECTION 2. In Colorado Revised Statutes, 24-4-105, **amend** (4) as follows:

24-4-105. Hearings and determinations - repeal. (4) (a) Any agency conducting a hearing, any administrative law judge, and any hearing officer shall have authority to: Administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof and receive evidence; dispose of motions relating to the discovery and production of relevant documents and things for inspection, copying, or photographing; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for the filing of briefs and other documents; direct the parties to appear and confer to consider the simplification of the issues, admissions of fact or of documents to avoid unnecessary proof, and limitation of the number of expert witnesses; issue appropriate orders ~~which~~ THAT shall control the subsequent course of the proceedings; dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground;

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

dispose of motions to amend or to dismiss without prejudice applications and other pleadings; dispose of motions to intervene, procedural requests, or similar matters; reprimand or exclude from the hearing any person for any improper or indecorous conduct in his OR HER presence; award attorney fees for abuses of discovery procedures or as otherwise provided under the Colorado rules of civil procedure; and take any other action authorized by agency rule consistent with this article 4 or in accordance, to the extent practicable, with the procedure in the district courts. All parties to the proceeding shall also have the right to cross-examine witnesses who testify at the proceeding. In the event more than one person engages in the conduct of a hearing, such persons shall designate one of their number to perform such of the above functions as can best be performed by one person only, and thereafter such person only shall perform those functions ~~which~~ THAT are assigned to him OR HER by the several persons conducting such hearing.

(b)(I)(A) THE GENERAL ASSEMBLY HEREBY FINDS THAT THE MEDIATION PROCESS GENERALLY SAVES THE STATE AND THE LICENSEE TIME AND MONEY. MEDIATION TAKES MUCH LESS TIME THAN MOVING A CASE THROUGH AGENCY PROCEEDINGS AND JUDICIAL REVIEW. THESE CASES TYPICALLY TAKE MONTHS OR YEARS TO RESOLVE, BUT MEDIATION TYPICALLY ACHIEVES A RESOLUTION IN A MATTER OF HOURS. TAKING LESS TIME MEANS EXPENDING LESS MONEY ON HOURLY FEES AND COSTS. THIS BENEFITS BOTH THE AGENCY AND THE LICENSEE, AND BECAUSE THE RESULT IS ATTAINED BY THE PARTIES WORKING TOGETHER, COMPLIANCE WITH THE MEDIATED AGREEMENT IS USUALLY HIGH. THIS FURTHER REDUCES COSTS BECAUSE AGENCIES DO NOT HAVE TO PAY AN ATTORNEY OR INVESTIGATORS TO FORCE COMPLIANCE.

(B) THE GENERAL ASSEMBLY HEREBY DECLARES THAT, IN ORDER TO SAVE TIME AND MONEY, THE POLICY OF COLORADO IS TO USE MEDIATION WHENEVER APPROPRIATE TO SETTLE DISPUTES BETWEEN AGENCIES AND LICENSEES.

(II) UPON PETITION OF THE AGENCY OR LICENSEE AFTER THE LICENSEE HAS RECEIVED THE NOTICE OF HEARING UNDER SUBSECTION (2)(a) OF THIS SECTION, THE HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE SHALL ORDER MEDIATION BETWEEN THE AGENCY AND THE LICENSEE UNLESS THE LICENSE WAS SUMMARILY SUSPENDED IN ACCORDANCE WITH SECTION 24-4-104 (4). WHEN MEDIATION IS ORDERED, THE AGENCY SHALL:

(A) ASSIGN A PERSON WITH AUTHORITY TO MAKE PREHEARING DECISIONS CONCERNING DISPOSITION OF THE MATTER TO BE PRESENT DURING MEETINGS RELATED TO SETTLEMENT COMMUNICATIONS OR MEDIATION COMMUNICATIONS AND TO BE INCLUDED IN ANY MATERIAL SETTLEMENT COMMUNICATIONS WITH THE LICENSEE OR THE LICENSEE'S REPRESENTATIVE OVER THE MATTER; AND

(B) UPON THE LICENSEE'S REQUEST, ALLOW A PRIVATE OR PUBLIC MEDIATOR CHOSEN BY THE LICENSEE TO BE PRESENT DURING MEETINGS RELATED TO MEDIATION AND TO BE INCLUDED IN ANY MATERIAL SETTLEMENT COMMUNICATIONS WITH THE LICENSEE OR THE LICENSEE'S REPRESENTATIVE OVER THE MATTER. IF THE MEDIATOR IS PRIVATELY RETAINED, THE LICENSEE MUST PAY THE MEDIATOR'S REASONABLE FEES, AND THE AGENCY NEED NOT PAY THE PRIVATELY RETAINED MEDIATOR'S FEES.

(III) TO THE EXTENT FEASIBLE, FOR THE PURPOSE OF CARRYING OUT THIS SUBSECTION (4):

(A) ADMINISTRATIVE LAW JUDGES SHALL MAKE THEMSELVES AVAILABLE AS PUBLIC MEDIATORS WITHOUT COST TO THE LICENSEE;

(B) THE MEMBERS OF ANY GOVERNING BODY THAT REGULATES THE LICENSEE SHALL MAKE A MEMBER OR OTHER PERSON AVAILABLE FOR MEDIATION AS A PERSON WITH AUTHORITY TO MAKE PREHEARING DECISIONS CONCERNING DISPOSITION OF THE MATTER.

(IV) IF AN AGENCY FAILS TO COMPLY WITH AN ORDER OF MEDIATION, A LICENSEE ADVERSELY AFFECTED BY THE FAILURE MAY PETITION THE ADMINISTRATIVE LAW JUDGE OR HEARING OFFICER TO SUSPEND THE PROCEEDINGS AND REQUIRE COMPLIANCE WITH THE ORDER, TO BE COMPLETED IN GOOD FAITH AS SOON AS PRACTICABLE, UNDER THE ADMINISTRATIVE LAW JUDGE'S OR THE HEARING OFFICER'S SUPERVISION.

(V) IF MEDIATION FAILS, THE AGENCY SHALL NOTIFY THE ADMINISTRATIVE LAW JUDGE OR THE HEARING OFFICER, AND THE ADMINISTRATIVE LAW JUDGE OR THE HEARING OFFICER SHALL LIFT THE SUSPENSION AND PROCEED WITH THE HEARING.

(VI) WHEN DETERMINING THE PLACE TO HOLD THE MEDIATION, THE AGENCY SHALL GIVE DUE CONSIDERATION TO THE LOCATION OF THE LICENSEE'S OCCUPATION OR RESIDENCE, THE AVAILABILITY OF AN ADMINISTRATIVE LAW JUDGE TO MEDIATE, AND THE AVAILABILITY OF A MEMBER OF THE GOVERNING BODY THAT REGULATES THE LICENSEE TO BE A PERSON WITH AUTHORITY TO MAKE PREHEARING DECISIONS CONCERNING DISPOSITION OF THE MATTER.

(VII) THIS SUBSECTION (4)(b) APPLIES ONLY TO AGENCY PROCEEDINGS THAT CONCERN AN INDIVIDUAL WHO IS LICENSED TO PRACTICE AN OCCUPATION OR PROFESSION; EXCEPT THAT THIS SUBSECTION (4)(b) DOES NOT APPLY TO A COMMERCIAL DRIVER'S LICENSE ISSUED UNDER PART 4 OF ARTICLE 2 OF TITLE 42.

(VIII) THIS SUBSECTION (4)(b) DOES NOT APPLY IF A LICENSE HAS BEEN SUMMARILY SUSPENDED BECAUSE THE AGENCY FINDS, IN ACCORDANCE WITH SECTION 24-4-104(4), THAT THE LICENSEE IS GUILTY OF A DELIBERATE AND WILLFUL VIOLATION OR THAT THE PUBLIC HEALTH, SAFETY, OR WELFARE IMPERATIVELY REQUIRES EMERGENCY ACTION AND INCORPORATES THE FINDINGS IN THE AGENCY'S ORDER. NOTHING IN THIS SUBSECTION (4)(b) PROHIBITS AN AGENCY AND LICENSEE FROM VOLUNTARILY AGREEING TO A MEDIATION FOLLOWING A SUMMARY SUSPENSION.

(IX) BY JANUARY 1, 2022, THE OFFICE OF ADMINISTRATIVE COURTS AND THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES SHALL ISSUE A JOINT REPORT TO THE JUDICIARY COMMITTEE AND THE STATE, VETERANS, AND MILITARY AFFAIRS COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE JUDICIARY COMMITTEE AND THE STATE, VETERANS, AND MILITARY AFFAIRS COMMITTEE OF THE SENATE OR THEIR SUCCESSOR COMMITTEES. THIS SUBSECTION (4)(b)(VIII) IS REPEALED, EFFECTIVE JULY 1, 2022. THE REPORT MUST CONTAIN THE FOLLOWING:

(A) THE NUMBER OF HEARINGS AFFECTING LICENSES HELD BETWEEN JULY 1, 2016, AND JULY 1, 2018;

(B) THE NUMBER OF HEARINGS AFFECTING LICENSES HELD BETWEEN JULY 1, 2019, AND JULY 1, 2021;

(C) THE NUMBER OF MEDIATIONS HELD BETWEEN JULY 1, 2016, AND JULY 1, 2018;

(D) THE NUMBER OF MEDIATIONS HELD BETWEEN JULY 1, 2019, AND JULY 1, 2021;

(E) THE NUMBER OF PROCEEDINGS IN WHICH THE LICENSEE AND AGENCY AGREED TO SETTLE THE PROCEEDINGS BETWEEN JULY 1, 2016, AND JULY 1, 2018; AND

(F) THE NUMBER OF PROCEEDINGS IN WHICH THE LICENSEE AND AGENCY AGREED TO SETTLE THE PROCEEDINGS BETWEEN JULY 1, 2019, AND JULY 1, 2021.

SECTION 3. In Colorado Revised Statutes, 24-4-106, **amend** (7) as follows:

24-4-106. Judicial review. (7) (a) If the court finds no error, it shall affirm the agency action.

(b) THE COURT SHALL HOLD UNLAWFUL AND SET ASIDE THE AGENCY ACTION AND SHALL RESTRAIN THE ENFORCEMENT OF THE ORDER OR RULE UNDER REVIEW, COMPEL ANY AGENCY ACTION TO BE TAKEN THAT HAS BEEN UNLAWFULLY WITHHELD OR UNDULY DELAYED, REMAND THE CASE FOR FURTHER PROCEEDINGS, AND AFFORD OTHER RELIEF AS MAY BE APPROPRIATE ~~if it~~ THE COURT finds that the agency action is:

(I) Arbitrary or capricious;

(II) A denial of statutory right;

(III) Contrary to constitutional right, power, privilege, or immunity;

(IV) In excess of statutory jurisdiction, authority, purposes, or limitations;

(V) Not in accord with the procedures or procedural limitations of this article 4 or as otherwise required by law;

(VI) An abuse or clearly unwarranted exercise of discretion;

(VII) Based upon findings of fact that are clearly erroneous on the whole record;

(VIII) Unsupported by substantial evidence when the record is considered as a whole; or

(IX) Otherwise contrary to law, ~~then the court shall hold unlawful and set aside the agency action and shall restrain the enforcement of the order or rule under review, compel any agency action to be taken which has been unlawfully withheld or unduly delayed, remand the case for further proceedings, and afford such other relief as may be appropriate~~ INCLUDING FAILING TO COMPLY WITH SECTION 24-4-104 (3)(a) OR 24-4-105 (4)(b).

(c) In making the ~~foregoing determinations~~ FINDINGS SPECIFIED IN THIS SUBSECTION (7), the court shall review the whole record or ~~such portions thereof as may be~~ OF THE RECORD cited by any party.

(d) In all cases under review, the court shall determine all questions of law and interpret the statutory and constitutional provisions involved and shall apply ~~such~~ THE interpretation to the facts duly found or established.

SECTION 4. Appropriation. (1) For the 2018-19 state fiscal year, \$125,356 is appropriated to the department of regulatory agencies. This appropriation is from the division of professions and occupations cash fund created in section 24-34-105 (2)(b)(I), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) \$24,393 for use by the division of professions and occupations for personal services, which amount is based on an assumption that the division will require an additional 0.3 FTE;

(b) \$16,471 for use by the division of professions and occupations for operating expenses;

(c) \$19,917 for the purchase of administrative law judge services; and

(d) \$64,575 for the purchase of legal services.

(2) For the 2018-19 state fiscal year, \$19,917 is appropriated to the department of personnel for use by the office of administrative courts. This appropriation is from reappropriated funds received from the department of regulatory agencies under subsection (1)(c) of this section and is based on an assumption that the office will require an additional 0.2 FTE. To implement this act, the office may use this appropriation to provide administrative law judge services for the department of regulatory agencies.

(3) For the 2018-19 state fiscal year, \$64,575 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of regulatory agencies under subsection (1)(d) of this section and is based on an assumption that the department of law will require an additional 0.3 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of regulatory agencies.

SECTION 5. Applicability. This act applies to hearings brought to discipline the holder of a license, registration, or certification; to actions brought to enforce the "State Administrative Procedure Act"; and to judicial review of an agency's actions under preexisting law, on or after the effective date of this act.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 29, 2018